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In re Application of
MEIER et al
Application No.: 09/600,180
PCT No.: PCT/EP99/00635
Int. Filing Date: 01 February 1999
Priority Date: 05 February 1998
Attorney Docket No.: 194070USOPCT
For: APPARATUS AND SYNTHESIS
OF SUPPORT POLYMER MATERIALS
IN THE FORM OF POROUS POLYMER
BEADS

DECISION ON REQUEST

UNDER 37 CFR 1.497(d)

This is a decision on the "Request for Change of Inventorship under 37 CFR 1.48(a)" filed 21 December 2000, which has been treated as a request under 37 CFR 1.497(d), as the present application has not yet completed the requirements for entry into U.S. national stage.

BACKGROUND

On 01 February 1999, applicants filed international application No. PCT/EP99/00635 designating the United States and claiming a priority date of 05 February 1998. A Demand electing, *inter alia*, the United States, was filed prior to the expiration of 19 months from the priority date. Consequently, the deadline for entry into the national stage in the U.S. expired as of midnight of 05 August 2000.

On 04 August 2000, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, payment of the full U.S. basic national fee and surcharge fee under 37 CFR 1.492(e). A declaration was not filed.

On 22 August 2000, a "Notification of Missing Requirements Under 35 U.S.C. 371" (Form PCT/DO/EO/905) was mailed to applicants requiring an oath or declaration in compliance with 37 CFR 1.497(a)-(b). The notice set a one-month extendable period for reply.

On 21 December 2000, applicants filed the present request under 37 CFR 1.497(d)

accompanied by a three-month extension of time and an executed declaration. The declaration is executed by the inventors identified in the international application, as well as one additional inventor, i.e., Thomas Boller.

DISCUSSION

A request under 37 CFR 1.497(d) to accept an oath or declaration changing inventorship must include: 1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part; 2) the fee set forth in § 1.17(i); and 3) written consent of the assignee, if an assignment has been executed by any of the original named inventors.

Applicants have satisfied items (1)-(2) above.

With regard to item (3), it is not clear that consent of the assignee has been given. The first sentence of the "Consent for Assignee" indicates that "**Röhm GmbH**" is the "authorized representative" of the "Assignee, **Roehm GmbH**." It is unclear under what authority **Röhm GmbH** is permitted to sign the submission on behalf of **Roehm GmbH**. Is **Röhm GmbH** a holding company and thus a subsequent assignee? Proof of authority must be provided. Moreover, the "Consent" is signed by Drs. Teubner and Gottschalk as "authorized agents" of "**Röhm GmbH**." These signatories do not have apparent authority to sign the submission on behalf of **Röhm GmbH**, nor do they clearly state that they have been empowered to sign the submission on behalf of the corporate entity. See MPEP 324.

CONCLUSION

For the reasons above, the request under 37 CFR 1.497(d) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Request Under 37 CFR 1.497(d)". Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file the proper reply will result in **ABANDONMENT** of the application.

A proper reply must include written consent of the assignee as discussed above.

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Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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